[redacted]

From: Kathryn Jukes [redacted]
Sent: 27 March 2023 16:24
To: localplan@york.gov.uk
Subject: Draft Local Plan MM Consultation
Attachments: CYC LP MM Response 270323.pdf

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Good afternoon
Please find attached our response to the consultation.

Kind regards
Kathryn

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RESPONSE TO THE PROPOSED MAIN MODIFICATIONS CONSULTATION

CITY OF YORK LOCAL PLAN

PREPARED ON BEHALF OF VARIOUS CLIENTS

Providing direction since 2010

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27 March 2023

1.0 INTRODUCTION

Directions Planning Consultancy has been instructed in behalf of a number of clients to review the Proposed Main Modifications, and respond to the latest consultation on the draft City of York Local Plan.

2.0 COMMENTS ON THE PROPOSED MODIFICATIONS

Our comments relate to the Proposed Main Modifications Consultation documents, the associated evidence base documents and legislation. Wherever possible, we have referred to the Proposed Main Modifications and the documents to which our comments relate.

MM2.1

We still object to the target being set at 822 dwellings per annum, not least because the Plan will be considered out of date at the point it is adopted. We will not repeat the case we have put forward or that made by others to why the figure of 822 dwellings per annum is unsound, as previous Statements of Case are complete. We kindly request that the Inspectors review the evidence that has been presented through the examination and direct the Council to make the appropriate amendments in order to ensure the plan is sound.

MM2.2

In the second bullet point there is a typographical error: it should read “Ensuring that there is no deterioration…”

MM3.1

We still object to the idea that allocating land for a period of 5 years beyond the Plan period represents ‘permanence’ or accords with paragraphs 83 and 85 of the NPPF. We are now only 10 years from the end of the Plan period, so a further 5 years only allows for a maximum period of 15 years for Green Belt boundaries to endure. However, everyone is fully aware that the housing target will be out of date on adoption of the Plan, and so the Plan will need to be reviewed and land found to meet development limits. Given that land has been identified for a 5-year period beyond the Plan period then there is no doubt that the Green Belt boundaries will need to be reviewed in order to accommodate development over a longer time period than 5 years. On this basis alone, the policy is unsound.

A new bullet point has been introduced, which states “Prioritise making the best use of previously developed land.” MM3.2 then introduces reference to “…making as much use as possible of suitable previously developed land.” The justification therefore differs from the policy wording due to reference to how land should be “suitable”. We would therefore like to suggest that either the bullet point in the policy is amended to include the word “suitable” or the word “suitable” is removed from the explanation.

MM3.2

A new bullet point has been introduced as a consequence of MM3.1, which states “Prioritise making the best use of previously developed land.” MM3.2 then introduces reference to “…making as much use as possible of suitable previously developed land.” The justification therefore differs from the policy wording due to reference to how land should be “suitable”. We would therefore like to suggest that either the bullet point in the policy is amended to include the word “suitable” or else the word “suitable” is removed from the explanation.

MM3.7
Drinking establishments are now 'Sui Generis'. The policy therefore needs to refer to "Food and Drink (E or Sui Generis)" in order to be correct.

MM3.79
Please review the criterion that begins "Provide a high-quality landscape scheme in in order, as appropriate, either to mitigate impacts..." as the start of the sentence does not make sense. We would suggest deleting "in in order".

We otherwise support the modifications to the wording of the policy.

MM4.6
We object to the introduction of reference to "and in most cases not less than 18 months." No justification has been provided in respect of the proposed length of 18 months for marketing.

The Council has suggested the modification is on the basis of bringing the paragraph in line with paragraph 154 of the NPPF (2012). However, paragraph 154 simply states that Local Plans should make clear the opportunities for what will and what will not be permitted, along with where. Referring to 18 months marketing in no way, shape or form tells anyone what will be permitted or where it will be permitted, given it refers to when an application might be entertained.

In any event, paragraph 22 of the NPPF (2012) states that planning policies should avoid the long-term protection of sites allocated for employment uses where there is no reasonable prospect of a site being used for that purpose.

Having reviewed statutory policy and guidance, and planning appeal decisions, the general rule of thumb of 6 to 12 months is deemed to be a reasonable length for the marketing of a property. This includes policy and guidance adopted for London, and by Bristol City Council, Harrogate Borough Council, Wirral Metropolitan Borough Council and Chichester District Council – to name but a few.

We do not believe an 18-month period is reasonable either, given the financial liability it places on the landowner in respect of holding costs, which will include business rates, utility rates and insurance. Given that exemption from business rates on empty buildings ends after 12 months, then extending the marketing requirement to 18 months runs the risk of encouraging landowners to strip out buildings or undertake demolition with a view to delisting the building from business rates. Where buildings are demolished or fall into disrepair then they run the risk of attracting social problems including vandalism and arson. The Kimberley Hotel in Harrogate is a prime example where the building has been subject to arson in the last couple of weeks where it has also become home to squatters.

It should also be noted that there is a shortage of commercial properties for rent or sale in York, where we, and other agents, have already presented evidence demonstrating a lack of availability. Where there is a lack of availability then properties coming onto the market will be snapped up due to the level of demand. Within this context, it is reasonable to expect that any property that remains vacant for longer than 6 to 12 months must be surplus to demand, as those in need will be forced to compromise and take on less than ideal properties. To illustrate this point, it is worth noting the Report of the Director of Economy and Place dated 27 October 2020, which references the number of vacant Council owned

units and comments on general market conditions. Basically, only a few units were vacant at that time. Reports before and since report a similar pattern of low vacancy rates, which demonstrates how buoyant the commercial property market is within the City.

Without explanation, we cannot see how the Council can justify 18 months of marketing before considering whether an employment site might be redeveloped. Whilst it is useful for the length of marketing to be quoted, we would suggest the length needs to be revisited in order to ensure that it is consistent with the sentiment of paragraph 22 of the NPPF by reflecting the buoyancy of the property market in York where units do not generally stay vacant for long.

We are also concerned that the proposed modification now extends the protection offered by the policy beyond the wording of the policy itself through the introduction of “not just office or industrial uses.“

Policy EC2 provides protection against the loss of employment land. Criterion ii refers to protecting land that is necessary to meet employment needs during the plan period, which is with reference to policy EC1 and Table 4.1. With the modification suggesting that any type of employment use is to be protected, and not just office and industrial uses, then the wording now extends beyond the understanding of employment land outlined in policy EC1. We do not believe there is any justification for attempting to extend the protection offered by policy EC2 beyond the nature of employment land mentioned in policy EC1, as that would mean protecting land that has not been identified to meet employment needs during the plan period. As such, the modification is not consistent with the strategy set out in the plan.

In order for the plan to be found sound, we would suggest the proposed modification needs to be amended to read “This includes those employment-generating uses covered by Table 4.1 and policy EC1.”

MM4.8
The modification proposed introduces a new conflict with the modification proposed under MM4.7.

MM4.8 refers to only allowing temporary permission, whereas MM4.7 refers to allowing temporary or permanent permission for caravan parks. MM4.8 therefore needs to be amended to refer to both temporary or permanent permission.

Additionally, caravan parks are not generally considered to be inconsistent with policy requirements to protect openness, which is evident from numerous planning appeal decisions allowing caravan parks within Green Belt. Legislation (including the 1968 Caravan Act) makes clear how caravans are temporary structures, which means they are capable of being removed. They are also important to the rural economy. We would therefore suggest that MM4.8 is not contrary to national policy and legislation given the general sweeping statement that is simply wrong. Paragraph 28 of the NPPF (2012) makes clear that rural tourism is to be supported in countryside, including through the expansion of existing sites, whilst paragraph 89 sets out various exemptions to Green Belt policy through which caravan parks might be allowed. Consequently, the proposed modification is overly onerous and is not consistent with national policy or legislation.

MM6.3

There is a running theme through the modifications where the Council is attempting to introduce changes that create more onerous policy requirements than expected within the NPPF. Modification MM6.3 is one of those where the changes now set out an expectation that the loss of community facilities will only be allowed in 'exceptional' circumstances. Paragraph 70 of the NPPF (2012) simply says that local planning authorities should guard against the unnecessary loss of valued facilities and services. This test is not intended to be as onerous as the exceptions test.

For the plan to be sound, the wording needs to be looked at again to ensure it is consistent with the tone of the NPPF and does not introduce a higher test than expected by the Framework in order to maintain consistency especially as the local plan will need to be read alongside the most up to date version of the NPPF on adoption. Where the plan conflicts with the latest version then it will be considered out of date.

MM6.7

The modification includes the requirement for applicants to submit an audit of built sports facilities and their current capacity. There is, however, no explanation as to why such information needs to be submitted. It is also unclear how such information relates to paragraph 154 of the NPPF. Paragraph 154 sets out how local plans should set out the opportunities for development and clear policies on what and where development will be allowed. There is no indication how an audit of built sports facilities will assist with determining what development will be allowed or where. As such, the new requirement is not consistent with the NPPF and there is no justification for the new requirement given the lack of explanation as to the purpose of the information being sought.

MM11.7

Whilst the sentiment of the policy might be admirable, it is simply impractical and disproportionate to require change of use applications to achieve BREEAM 'excellent'.

To begin with, the threshold within the policy for BREEAM on a new building property is 1000sqm. If a proposal involves an extension, then policy CC2 refers to 100sqm. This raises the question as to why there is no threshold in respect of applications involving the change of use of existing buildings or where a listed building is involved. It seems wholly unreasonable to require BREEAM of any size of building involving conversion, given the costs of the process and the lack of tangible benefits.

It should be noted that Building Regulations have moved on a fair amount over the last 10 years, so the benefits of BREEAM relating to reductions in carbon are now captured by Building Regulations. BREAAM therefore does not now provide any real benefits to achieving sustainable development, as it once did in the time before the latest Regulations were adopted.

Also, the application is wholly disproportionate to the situation, where applicants of minor schemes are being asked to demonstrate BREEAM. This includes an instance where a homeowner was asked to submit BREEAM where planning permission had been sought to change a garage into a home office. Given the works also required Building Regulations then seeking also BREEAM secured no further benefits and simply put the applicant to time and expense.

As a minimum, the BREEAM threshold for conversions and listed buildings needs to be aligned with the threshold for extensions and set at 100sqm. There is no justification for the thresholds to be more onerous for smaller scale development, and so the thresholds should be reviewed in order for the plan to be found sound.

We also need to point out how the current thresholds are already proving impractical to apply, which gives reason to review the thresholds with the intention of ensuring they are reasonable.

By way of example, the following are all decisions whereby the Council has not required a BREEAM assessment to be submitted and therefore CC2 has not been applied, despite it being applicable:

22/00400/FUL	In total 563 sq m. Change of Use from Vehicle Maintenance/Storage (B2) to bus depot (Sui Generis). Incidentally they haven't had BREEAM apply to a new build they have subsequently been given consent for
22/00790/FUL	978 sq m. Conversion of industrial unit (B2/E) to indoor bouldering centre (E)
22/01668/FUL	450 sq m. Change of use of public house (Sui Generis) to café with drive thru, first floor offices and retail (E)
21/01905/FUL	704 sq m. Change of use from industrial warehouse (B1, B2, B8) to warehouse, business and clinic (B8, B2, E)
22/00459/FUL	1,261 sq m. Change of use of part of existing brewery (B2) to ancillary tap room and associated facilities (B2/Sui Generis)
22/01340/ABFU	450 sq m. Change of use from agricultural to use class B8
21/01787/FUL	259 sq m. Change of use of bridge club to offices and café
21/02768/FUL	151 sq m. Change of use of bridge club to offices, café and apartments
22/00703/FUL	272 sq m. Change of use including merging two units together from retail and betting shop to restaurant
22/02081/FUL	139 sq m. Change of use of beauty salon to café

Given the amount of floor space involved, we must question the practicality and reasonableness of seeking BREEAM on small scale, or even any scale under the threshold of major development where change of use is involved.

MM11.10

The modification introduces paragraph 11.12b, which refers to how applications will need to be accompanied by a Sustainability and Energy Statement to "be completed by a suitably qualified individual". The modification therefore introduces a new requirement whereby it is now necessary for all applications to be accompanied by a report prepared by a professionally qualified person. This new requirement will be disproportionate to the scale and nature of most applications, in particular where extensions are proposed to residential properties or involve change in use of existing buildings. There is no reason why the report needs to be prepared by a suitably qualified person and there is no guidance on who might be deemed by the Council to be suitably qualified. The new requirement is therefore considered to be overly onerous, especially in light of the nature of applications to which the requirement applies.

Additionally, the 2021 Building Regulations for residential properties now delivers at least a 30% improvement over and above 2013 standards and the requirement is to increase in 2024. So, it is not even clear why a report is required to state what is now a requirement of development. Given the

requirements of the policy, then development will deliver on the policy requirements without even needing to provide a statement to that effect.

Paragraph 193 of the NPPF makes clear that the requirements of applications should be proportionate to the nature and scale of development proposals. In this instance, there is either no reason for a statement to be provided, or else, it will introduce an unnecessary burden on development that simply cannot be justified.

MM12.3

Paragraph 123 of the NPPF (2012) makes clear how decisions should aim to avoid giving rise to "significant adverse impacts". It is therefore unclear why the modification intends to set a higher test where development will not be permitted where there is simply "unacceptable harm". The local plan policies are required to be consistent with legislation so it is necessary for the policy test to be amended in order to be complaint. For this reason, the first sentence should be updated so that it refers to "Development will be permitted where it does not cause significant adverse impacts to the amenities of existing and future…" The bullet points then also need to be updated for the purpose of compliance with legislation so that the word 'significant' precedes the word 'adverse' in each instance.

MM12.5

The modification states "Development proposed in area of flood risk must be informed by an acceptable site-specific flood risk assessment." However, there is no definition as to what is meant by "acceptable". For the purpose of clarity and to ensure compliance with legislation we would ask that it is made clear that the flood risk assessment should comply with the planning practice guidance and guidance prepared by the Environment Agency. Without such clarification then it is open to interpretation as to what might be deemed 'acceptable', where the local planning authority is unlikely to be able to take a consistent approach. Such a situation would be contrary to the tests of soundness, which is why it is important the change is made to the modification.

MM14.8

Within the modification, mention is made of how "The Council will enable and where appropriate require development to contribute to:". Within the context the use of "where appropriate" is not compliant with legislation. In order to be compliant, the tests set out under paragraph 204 of the NPPF (2012) should be referenced within the policy clause. This means the sentence should be revised to read "The Council will enable and require development to contribute to the following, where considered necessary, and the requirement is directly and reasonably related to the development:"

MM15.1

The modification suggests that developers can only submit a viability assessment if "exceptional circumstances" can be demonstrated. This requirement is too onerous and is not consistent with legislation and guidance. The current and previous versions of the planning practice guidance make clear how applicants simply need to demonstrate whether "particular circumstances" justify the need for a viability assessment at the application stage. As such, "particular circumstances" are quite different and distinct from "exceptional circumstances", where the word 'exception' sets a much higher test.

In order to be compliant with legislation, we would suggest the word “exceptional” is replaced with “particular” so that the requirement is compliant.

MM15.4

The modification introduces an additional requirement whereby the Council is seeking a second chance to seek planning obligations after permission has been granted. This new requirement is extremely concerning on a number of fronts.

The first is that legislation makes clear how it is possible for a developer to seek modification or amendment to a S106 on the basis of viability, including through Section 106B of the 1990 Act and the Growth and Infrastructure Act 2013. However, there is no clause within legislation that allows for a local planning authority to seek an amendment to a S106 in order to secure a higher contribution once a decision notice has been issued. As such, there is no provision to support the intentions of the modification with the current wording.

This is unless a contribution has been reduced below the requirements set out in policies to provide flexibility in the early stages of development, which is explained in the planning practice guidance. In such circumstances, the guidance explains how there is an opportunity for flexibility to allow for policy compliance to be achieved over time. However, this is not intended to be an opportunity for local planning authorities to increase the level of contributions sought simply because sale values increase. It is simply to allow for a scheme to become policy compliant where it was not to begin with, but this is not what is explained through the modification.

Secondly, no timeframe is mentioned within the modification, which means the Council could come back to seek a re-run at any point in time. This includes situations where a developer has sold the development and then the Council wishes to come back to seek additional contributions. At the point that a developer has paid taxes and the development is complete with final accounts having been produced then it is unreasonable for the Council to seek further contributions. This is because the contributions would be liabilities on the Directors of the company, rather than part of the costings of the development.

Finally, it is unreasonable for the Council to suggest wishing to seek further contributions unless there is an opportunity for the caveat to work in the opposite direction. This includes where the development does not generate the amount of profit expected due to lower sales values or higher costs.

Given the legislation does not support the additional clause in the terms expressed then we would suggest the modification is simply deleted. S106B of the Act (1990) and the Growth and Infrastructure Act 2013 set out the circumstances in which a S106 agreement can be revisited and so we would suggest the legislation should be relied upon.

3.0 CONCLUSION

Our understanding is that the modifications are intended to make the plan sound. However, it appears that the modifications introduce various new requirements that are more onerous than the policy in the NPPF. We would therefore kindly ask that the wording is amended to make sure that it is consistent with the NPPF as we have not seen any justification or evidence as to why policy needs to be more arduous in York than other parts of England.